

**REMARKS**

Claims 1-9 stand rejected under 35 USC 103(a) as being unpatentable over JP 63-281441 (hereinafter JP '441) in view of Kajiyama.

The abstract of JP '441 describes a process for making a first recess in a structure which has a large aspect ratio from a number of recesses with different aspect ratios. A filler is applied to the structure in such a way that a hollow space is formed in first recesses with a large aspect ratio. The filler layer is then removed in an etching process, the etching process also being carried out in the hollow space and, owing to the hollow space, the filler layer being removed more quickly from the first recess than from recesses without the hollow space. The etching process is stopped after the filler layer has been removed from the first recess, while leaving some filling material in the second recess having low aspect ratio.

JP '411 does not describe or suggest a method for masking first recesses in a structure having recesses with a higher aspect ratio as claimed. Specifically, JP '411 fails to disclose or suggest stopping the etching process after "after removal of the filling layer from the first recess, with the defined distance being selected such that the webs are not underetched in an area of a recess with a low aspect ratio during the etching process." In JP '441 the filler layer is completely removed from the recess with the large aspect ratio by means of an etching process and the filler layer is also partially removed from the recess with the small aspect ratio.

The Examiner admits that JP '441 "differs from the instant application method in that the step in which the filler layer is removed up into the region of the hollow space is carried out by means of a planar removal process." Accordingly, the Examiner cites to Kajiyama as teaching trenches that "are filled with TEOS material that can be removed or polish back by means of MP (planar removal process or isotropic etching process (col. 7, lines 51-56))."

The Examiner has cited no applicable reason to apply this process to the process disclosed in JP '441 as JP '441 explicitly states to use another process. Specifically, the Examiner has only

stated that it would be obvious to introduce CMP into JP '441, because this process can be used for the removal of TEOS materials. The Federal Circuit has made clear that the mere fact something can be done is not a sufficient reason to support a combination of references. Specifically, MPEP 2143.01 III states "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)." JP '441 specifically teaches using only a planar removal process. Since neither of the cited references offer any reason to change this process to arrive at the claimed process, this rejection should be withdrawn.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **543822005500**.

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Respectfully submitted,

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